

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The OTS may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anti-competitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the OTS.

(3) The OTS may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period; and

(i) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has issued stock in connection with a

qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (i) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the OTS has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

§ 563f.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 563f.3 is permissible, if:

(1) The interlock is not prohibited by § 563f.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

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§ 563f.6 General exemption.

(a) *Exemption.* The OTS may by agency order exempt an interlock from the prohibitions in § 563f.3 if the OTS finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns. A depository organization may apply to OTS for an exemption under part 516, subpart E, of this chapter.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the OTS will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial